RHB BANK BHD

v.

WELINKO SDN BHD & ORS & ANOTHER SUIT

HIGH COURT SABAH & SARAWAK, SIBU
CLEMENT SKINNER J
[SUIT NOS: 22-84-2000 & 22-74-2000]
15 NOVEMBER 2001

CIVIL PROCEDURE: *Writ of summons - Service - Whether copy of writ served must be sealed - Whether receivable in evidence - Rules of the High Court 1980, O. 38 r. 10, O. 63 r. 3*

CIVIL PROCEDURE: *Writ of summons - Signature - Affixing of name in block letters by means of a rubber stamp - Whether sufficient to authenticate copy - Whether writ served a "copy" - Rules of the High Court 1980, O. 62, r. 3*

These were applications by the defendants seeking to set aside service of a writ of summons on grounds that such service was invalid, ineffective or a nullity as the copy of the writ of summons served on them by the plaintiff was not properly signed nor sealed.

Held:

[1] The provisions of O. 63 r. 3 of the Rules of the High Court 1980 ('RHC') did not require the copy of the writ that was served on the defendants to be a sealed copy; even if the copy of the writ which was served on the defendants was not sealed, it nevertheless, purported to be sealed with the seal of the court, by virtue of the letters "L.S." in a circle being stamped on it by the Registry, and was, under O. 38 r. 10 of the RHC, deemed to be an office copy of the writ and receivable in evidence in these proceedings. (pp 324 h & 325 e)

[2] The writ that was served on the defendants was a "copy" within the meaning of O. 62 r. 3 of the RHC, *albeit* a conformed copy, because it was in every respect an exact copy of the original writ and the absence of the senior assistant registrar's signature on it was explained by the words "(Sgd.) ALLAUDDIN BIN MOHD. TAHIR" which clearly indicated that it was signed by the person whose signature appeared on the original. As he had signed the original and the other sealed copy of the writ under his own hand to authenticate them, the affixing of his name in block letters by means of a rubber stamp onto the copy sufficiently authenticated it. (pp 327 h & 328 c-d)

[Applications dismissed.]

Case(s) referred to:

Arab-Malaysian Merchant Bank Berhad v. Dominance Resources Sdn Bhd [2002] 5 CLJ 1 ***(foll)***

Ataka Lumber Hong Kong Ltd v. Dominance Resources Sdn Bhd & Ors (Suit 22-36-2000) (unreported) ***(foll)***

Capital Insurance Bhd v. Kassim Ali [2000] 1 CLJ 269 ***(refd)***

Jayasankarah v. PP [1983] 1 MLJ 379 ***(refd)***

Khooi Beng Aun v. Koh Chin Leah [1994] 4 CLJ 138 ***(refd)***

Legislation referred to:

Penal Code, s. 307

Rules of the High Court 1980, O. 6 rr. 3, 6(2), (3), O. 38 r. 10(2), O. 60 r. 3(1), O. 62 r. 3(a), O. 63 r. 3(1), O. 92 r. 2

Other source(s) referred to:

Atkin's Court Forms, vol 1, 1992 issue

Black's Law Dictionary, 7th edn

Halsbury's Laws of England, 4th edn, vol 37

LB Curson, *Dictionary of Law,* 4 edn, p 232

Stroud's Judicial Dictionary, 5th edn

For the plaintiff - Frank Tang; M/s Tang & Partners

For the defendants - Idris Abdullah; M/s Idris & Co

Reported by Suresh Nathan

JUDGMENT

Clement Skinner J:

This is the hearing of three applications which have been filed in two suits but are being heard together as they raise the same issues. Two applications have been filed in Suit 22-84-2000 by the second and third defendants therein (and form encls. 25 and 27 thereof) and one application has been filed in Suit 22-74-2000 by the second defendant (and forms encl. 31 thereof). Each application seeks to set aside the service of the writ of summons on the defendant concerned on the grounds that such service is invalid, ineffective and/or a nullity as the copy of the writ of summons that was served on them was not properly signed nor sealed.

The brief facts leading up to the filing of the defendants' applications are these. In Suit 22-84-2000, the plaintiff's claim is against the first defendant as principal debtor and against the second and third defendants as guarantors for the sum of RM3,151,305.88 due as at 31 July 2000 with interest thereon at the rate set out in the writ in respect of equipment leasing agreements entered into between the plaintiff and first defendant. In Suit 22-74-2000, the plaintiff's claim is against the first defendant as hirer and against the second defendant as guarantor for the sum of RM3,368,732.68 due as at 31 December 1999 with interest thereon at the rate set out in the writ in respect of hire-purchase agreements entered into between the plaintiff and the first defendant.

Suit 22-84-2000 was commenced on 24 October 2000 and Suit 22-74-2000 on 25 August 2000 when the plaintiff caused the respective writ of summons in each suit to be issued out of the registry of the High Court of Sabah and Sarawak at Sibu.

When the writ of summons in each suit was served on the defendant concerned, they obtained leave to enter a conditional appearance and pursuant to that leave, bring these applications on the grounds adverted to earlier.

I will take the second point raised by the defendants first, namely, that the copy of the writ of summons that was served on them was not sealed. It is the complaint of counsel for the defendants that the copy of the writ that was served on each of them only carried on its face a rubber stamp impression of the letters "L.S" enclosed in a circle. It is the contention of counsel for the defendants that they should have each be served with a duly sealed copy of the writ ie, with the seal of the court embossed thereon. In support of his contention, counsel for the defendants adopted the submissions he had made on the same point which was raised in another suit before this court, namely Suit 22-36-2000 between *Ataka Lumber Hong Kong Ltd v. Dominance Resources Sdn Bhd and Ors.* Counsel had in that case submitted that from a reading of the provisions of O. 62 r. 3(a) Rules of the High Court 1980 (hereafter the 'RHC') which deals with the service of a writ; and of O. 6 r. 6(2) and (3) RHC which sets out the procedure for the issuance of a writ by the registry of a High Court and how many copies of the writ are signed and sealed by the registrar on its issuance; and by reference to commentaries found in publications on civil procedure in Malaysia and Singapore as well as to Atkin's Court Forms vol. 1 1992 Issue and *Halsbury's Laws of England* 4 edn. vol. 37 on the "issue of writ of summons", counsel for the defendants contended that the copy of the writ which is served on a defendant must be a duly sealed copy.

I did not agree with those submissions when they were made to me in the *Ataka Lumber* case and do not do so here as well. In my judgment there is no requirement to serve a sealed copy of the writ on a defendant and the provisions of O. 62 r. 3 RHC make this abundantly plain and clear.

Order 62 r. 3 RHC provides as follows:

> 3. Personal Service: How effected (Ord. 62 r. 3)
>
> Personal service of a document is effected by leaving a copy of the document with the person to be served and, if so requested by him at the time when it is left, showing him:
>
> (a) in the case where the document is a writ or other originating process, the sealed copy; and
>
> (b) in any other case, an office copy.

A reading of the above provisions shows that what is required is that a copy of the writ be served, with the sealed copy of the writ being shown to a defendant at the time of service if he so requests to see it.

This issue of whether it is a sealed copy of the writ that must be served on a defendant and the arguments and submissions that have been made on this issue on behalf of the defendants here were also raised and fully argued in Sibu High Court Suit No. 22-56 of 2000 between *Arab-Malaysian Merchant Bank Berhad v. Dominance Resources Sdn Bhd* [2002] 5 CLJ 1. I had in that case held, as I do here, that there is no requirement to serve a sealed copy of the writ on a defendant and had given my reasons for saying so and it would serve no purpose to repeat them here. I should point out, however, that in coming to a decision in that case, I had explained that in issuing a writ, the registry of this High Court embosses the seal of the court onto only the original and a copy of the writ, irrespective of the number of defendants and copies of the writ required for service on them; and to all other copies of the writ, including the copy to be served on a defendant, the registry will affix a rubber stamp impression of the letters "L.S." in a circle onto the face of the writ. The letters "L.S." are the initials for the latin words *Locus Sigilli* or Place of the Seal and is affixed to the copies of the writ in accordance with Practice Note No. 1 of 1980 issued by the registrar of the then High Court in Borneo.

It is the submission of counsel for the defendants that Practice Note No. 1 is invalid and ineffective in law as it was issued in contravention of O. 92 r. 2 RHC which states that every document issued by the registry for which a Form marked with the word "Seal" as prescribed in Appendix A must bear the seal of the court. In support, the case of *Jayasankarah v. PP* [1983] 1 MLJ 379 at p. 380 was cited. In that case, it was held that Practice Note No. 2 of 1960 (of the High Court of Malaya) which directed that a notice of appeal and petition of appeal must be signed personally by an appellant, when s. 307 of the Penal Code did not specify any such requirement, cannot be exalted into a rule of law reflecting the true requirements of s. 307 of the Penal Code.

I regret I find no merit in the submission made by counsel for the defendants on the point about Practice Note No. 1. In the first place, we are here concerned with the question of service of the writ on a defendant and the provisions of O. 62 r. 3 make it plain that there is no requirement to serve a defendant with a sealed copy. In the second place, I do not think Practice Note No. 1 was issued in contravention of O. 92 r. 2 RHC as alleged. Bearing in mind that the original and a copy of the writ are always impressed with the seal of the court, and further bearing in mind that O. 62 r. 3 does not require the copy of the writ that is served on a defendant to be a sealed copy, what Practice Note No. 1 seeks to do in its application to a writ is to obviate the necessity of having to emboss or impress every copy of the writ with the

seal by instead having impressed on it the letters "L.S." in a circle to show where the seal of the court should be. LB Curson's *Dictionary of Law*, 4 edn at p. 232 states:

> "L.S." may be used in a document to show where the seal should be.

In my judgment, the purpose of affixing the seal of the court to a writ on its issuance is to authenticate it. The original copy of the writ which bears the seal of the court is always retained in the court file and what is served on a defendant being a copy only of what is retained in the court file, is duly authenticated when the letters "L.S." in a circle are stamped onto it by the registry in place of the seal to show where the seal should be.

With reference to the cases of *Capital Insurance Bhd v. Kassim Ali* [2000] 1 CLJ 269 and *Khooi Beng Aun v. Koh Chin Leah* [1994] 4 CLJ 138, which were referred to by counsel for the defendants, I do not think the decision in those cases are of any assistance to the defendants here as they dealt with a photocopy of a document being used and did not deal with the question of whether a copy of the writ that is served on a defendant requires to be a sealed copy.

It has also been pointed out by Frank Tang of counsel for the plaintiff that even if the copy of the writ which is served on a defendant is not sealed, it nevertheless, purports to be sealed with the seal of the court, by virtue of the letters "L.S." in a circle being stamped on it by the registry, and is by O. 38 r. 10 RHC, deemed to be an office copy of the writ and receivable in evidence in these proceedings. I agree with that submission.

Order 38 r. 10 provides the meaning of an office copy and is expressed in the following terms:

> Court documents admissible or receivable in evidence (O. 38 r. 10).
>
> (1) Office copies of writs, records, pleadings and documents filed in the Registry shall be admissible in evidence in any cause or matter and between all parties to the same extent as the original would be admissible.
>
> (2) Without prejudice to the provisions of any written law, every document purporting to be sealed with the seal of the High Court shall be received in evidence without further proof, and any document purporting to be so sealed and to be a copy of a document filed in, or issued out of, the High Court shall be deemed to be an office copy of that document without further proof unless the contrary is shown.

Counsel for the defendants submitted that O. 38 r. 10 is not relevant to the issue at hand because that order concerns the admissibility in evidence of office copies of writs etc. whereas we are here concerned with the validity of the service of a writ. According to counsel for the defendants, O. 38 r. 10 is meant

to apply to copies of writs, records, pleadings and documents filed in other suits which is intended to be put into evidence in the suit at hand. I do not think O. 38 r. 10 should be confined in its application in the manner suggested by counsel for the defendants. Order 38 r. 10(2) is especially relevant here as the defendants have called into question the service on them of a document, namely, a copy of a writ which they say should bear the seal of the court but is instead indorsed with the letter "L.S." in a circle. However, O. 38 r. 10(2) makes it plain that what was served on the defendants is deemed to be an office copy of the original writ filed in court, as it purports to be sealed with the seal of the court (having been indorsed with the letters "L.S." in a circle) and to be a copy of the original writ filed in court. Being an office copy, it would be receivable in evidence against the defendants to the same extent as the original writ which bears the seal of the court would be. So the defendants' complaint about not being served with a sealed copy of the writ really amounts to nothing.

It was also the submission of counsel for the defendants that the "copy" of the writ which is served on a defendant must refer to a sealed copy because O. 63 r. 3(1) RHC provides that any document filed in the registry in any proceedings must be sealed with a seal showing the date on which the document was filed. According to counsel for the defendants, since a plaintiff who wishes to issue a writ must first file at the registry "the original and as many copies thereof as there are defendants to be served" (see O. 6 r. 6(2)), the practice of the courts in Sarawak to seal only the original and a copy of the writ and to mark "L.S." in a circle on the remainder would not be in compliance with O. 60 r. 3(1) RHC. I regret I find no merit in this submission. The "seal" which is referred to in O. 60 r. 3(1) is a "seal showing the date" on which the document was filed and has nothing to do with the seal of the court which is embossed on the original writ and a copy on its issue.

It was next submitted on behalf of the defendants that Practice Note No. 1 of 1980 is misconceived and ought to be disregarded as it indicates that the seal is at the top in a Form initialling action and at the bottom in the other Forms. According to counsel, the letters "L.S." in a circle ought to be affixed where the seal should be and not at the top of the Form. To me, this objection represents technicality with a vengeance. It is totally devoid of any merit as Form 2 in Appendix A to the RHC clearly shows the word "(Seal)" is located at the top of the Form.

With that, I turn to consider the other complaint of the defendants, namely, that they were served with a copy of the writ which did not bear the signature of the registrar or senior assistant registrar. The court's records shows that the senior assistant registrar signed his name in his own handwriting on the original as well as the "proof copy" of the writ but on the copy of the writ

which was served on the defendants, at the place designated for his signature, the senior assistant registrar affixed his name by means of a rubber stamp which reads: "(sgd.) Allauddin Mohd Tahir".

It is the submission of counsel for the defendants that because the senior assistant registrar did not personally sign the copy of the writ which was served on the defendants, it did not constitute a proper copy of the original writ in the court file. It is the submission of counsel that a "copy" ought to possess similar characteristics in all respect to the original and in support of his contention, referred to the definition of "copy" in *Webster's International Dictionary and Thesaurus* which describes "copy" as an "imitation", "reproduction".

I find this to be yet another objection of a purely technical nature taken by the defendants. Order 62 r. 3 merely uses the word "copy" to describe the service copy of the writ that is served on a defendant. In my judgment, the word "copy" should not be defined to mean "imitation" or "reproduction" only as counsel for the defendants would wish to. It admits of several other meanings as well. Indeed, if reference is made to *Black's Law Dictionary* 7th edn, the word "copy" is defined to include the following:

> "certified copy" – A duplicate of an original document, certified as an exact reproduction usually by the officer responsible for issuing or keeping the original.
>
> "conformed copy" – An exact copy of a document bearing written explanation of things that were not or could not be copied, such as a note on the document indicating that it was signed by a person whose signature appears on the original.
>
> "examined copy" – A copy that has been compared with the original or with an official record of an original.
>
> "true copy" – A copy that while not necessarily exact, is sufficiently close to the original that anyone can understand it.

In my judgment, the writ that was served on the defendants was a "copy" within the meaning of O. 62 r. 3, *albeit* a conformed copy, because it is in every respect an exact copy of the original writ and the absence of the signature of the senior assistant registrar on it is explained by the words "(Sgd.) Allauddin Mohd Tahir" which clearly indicates that it was signed by a person whose signature appears on the original.

Counsel for the defendants further submitted that the copy of the writ which was served on the defendants cannot be a conformed copy because the signature of the senior assistant registrar which appears on the original of the writ of summons is not something which "could not be copied" and in the

absence of the said signature, the "copy" of the writ of summons served on the defendants cannot be an "exact copy" of the original writ of summons. I cannot agree with this submission. It conveniently or rather deliberately chooses to overlook the words "that were not or" "which immediately precedes the words "could not be copied". The signature of the senior assistant registrar on the original writ was, therefore, something "that was not" copied on the copy of the writ that was served on the defendants.

Even if I am wrong in what I say above, it is my view that the copy of the writ that was served on the defendants need not be signed by the senior assistant registrar under his own hand to make it a proper copy of the original in the court file. The purpose of the senior assistant registrar's signature appearing on a copy of the writ is to authenticate it. Bearing in mind that he has signed the original and the other sealed copy of the writ under his own hand to authenticate them, does he need to also personally write his name on the copies to authenticate them? In my judgment he does not need to do so as his affixing of his name in block letters by means of a rubber stamp onto the copy sufficiently authenticates it.

Stroud's Judicial Dictionary, 5th edn contains the following definition of "Signed; Signature".

> Speaking generally, a signature is the writing, or otherwise affixing, a person's name, or a mark to represent his name, by himself or by his authority, with the intention of authenticating a document as being that of, or as binding on, the person whose name or mark is so written or affixed.

That definition shows that a person signs when he writes or "otherwise affixes" his name to a document to authenticate it. In this case, the senior assistant registrar has used both means of authentication: he has signed the original writ as well as the "proof copy" by writing his name on them and he has also affixed by means of a rubber stamp, his name to the copies of the writ which were served on the defendants. In both instances, he has done so in his official capacity as senior assistant registrar to authenticate the same.

In the *Shorter Oxford English Dictionary*, the meaning of the word "to sign" includes not only actually writing one's name but also,

> to affix one's name to (a document, etc.)

It follows then that in my judgment, the copy of the writ that was served on the defendants was a proper copy within the meaning of O. 6 r. 3 RHC.

In the result I would dismiss the defendants applications in both suits with costs to the plaintiff.